

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

**QUINTON CAGE v. HOWARD CARLTON, WARDEN and
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Johnson County
No. 5200 Lynn W. Brown, Judge**

No. E2008-00357-CCA-R3-HC - Filed August 8, 2008

The petitioner, Quinton Cage, has appealed the Johnson County Circuit Court's dismissal of his petition for writ of habeas corpus. The State has moved this court pursuant to Tennessee Court of Criminal Appeals Rule 20 to summarily affirm the trial court's order. The petitioner has failed to establish a cognizable claim for relief. We therefore affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

Quinton Cage, appellant, *pro se*.

Robert E. Cooper, Attorney General & Reporter; and Lacy Elaine Wilber, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In December 1994, a Montgomery County jury convicted the Petitioner of aggravated rape, especially aggravated kidnaping, aggravated robbery, attempted aggravated robbery, and reckless endangerment with a deadly weapon. The trial court imposed sentences of 25 years for aggravated rape, 20 years for especially aggravated kidnaping, 8 years for aggravated robbery, 3 years for attempted aggravated robbery, and 2 years for reckless endangerment. All sentences were to be served consecutively except for the attempted aggravated robbery. On direct appeal, this court affirmed the convictions and sentences. See State v. Quinton Cage, No. 01C01-9605-CC-00179 (Tenn. Crim. App. 1999), app. denied (Tenn. 1999). The trial court denied the petitioner's post-conviction relief petition in which he claimed that he received ineffective assistance of counsel at trial, and this court affirmed the judgment. See State v. Quinton A. Cage, No. M2000-01989-CCA-R3-PC (Tenn. Crim. App. Aug. 7, 2001).

On November 28, 2007, the petitioner filed a petition for writ of habeas corpus in which he challenged his judgment as void based on an asserted double jeopardy violation. In particular, the

petitioner claimed that he received multiple convictions and sentences based on the “same offense.” In the trial court, the state moved to dismiss for failure to state a colorable claim for relief. In addition, the state asserted that the petitioner had waived his double jeopardy claim because he failed to include it among the issues he raised on direct appeal. The trial court summarily dismissed the petition for failure to establish a cognizable claim for relief. Before this court, the petitioner argues that the trial court erred in dismissing his petition and in failing to appoint counsel.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); Tenn. Code Ann. § 29-21-101. The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). The burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). A petition that fails to state a cognizable claim may be summarily dismissed by the trial court without appointment of counsel, without an evidentiary hearing, and without the opportunity to amend the petition. See Tenn. Code Ann. § 29-21-109; Mitchell v. Carlton, 1998 Tenn. Crim. App. LEXIS 45, *3, No. 03 C01-9704-CR-00125 (Tenn. Crim. App. Jan. 12, 1998).

The petitioner’s asserted double jeopardy violation is not appropriate for consideration in a habeas corpus proceeding. See Ralph Phillip Claypole, Jr., v. State, 2001 Tenn. Crim. App. LEXIS 367, *6-7, No. M1999-02591-CCA-R3-PC (Tenn. Crim. App. May 16, 2001)(a double jeopardy claim is not cognizable in a habeas corpus proceeding); Dana Andrew Harvey v. State, 1996 Tenn. Crim. App. LEXIS 383, *2, No. 03C01-9510-CC-00307 (Tenn. Crim. App. June 28, 1996)(same). Because the petitioner’s claims, even if proven, would result only in his convictions being voidable, not void, his petition was properly dismissed, summarily and without the appointment of counsel. See Archer, 851 S.W.2d at 163.

Because an opinion would have no precedential value and because no error of law requiring a reversal of the action is apparent on the record, we affirm the trial court’s denial of habeas corpus relief pursuant to Tennessee Court of Criminal Appeals Rule 20.

NORMA MCGEE OGLE, JUDGE